(1) To Lim Kim Chai (the widow of the deceased)	$5,000
(2) To Tee Chin Leong	$3,500
(3) To Tee Ai Hiok	$3,500
(4) To Tee Ai Kim	$3,000

The share of the infants Tee Chin Leong, Tee Ai Hiok and Tee Ai Kim will be deposited with the public trustee in trust for the infants until they attain majority, or in the case of Tee Ai Hiok until she marries. There will be liberty to the mother of the infants to apply during the minority of the infants.

The sum of $8,000 awarded for loss of dependency in Civil Suit No. 60 of 1968 will be apportioned as follows:

(1) To Gan Ching Baw (the widow of the deceased)	$2,300
(2) To Teh Ah Hong	Nil
(3) To Teh Ah Leng	$ 300
(4) To Teh Ah Kou	$ 900
(5) To Teh Ling Eh	$2,100
(6) To Teh Nya Enai	$2,400

The share of the three infants Teh Ah Kau, Teh Ling Eh and Teh Nya Enai will be paid to the public trustee in trust for the infants until they attain majority. There will be liberty to the mother of the infants to apply during the minority of the infants. I understand that Teh Ah Leng has already attained majority.

Judgment for the plaintiffs.

Solicitors: *Murphy & Dunbar; Ironside & de Souza.*

CHIK BINTE ABDUL HAMID v. CHONG KEE SENG

(O.C.J. (Ibrahim J.) June 16, 1970]

[Kuala Trengganu — Civil Suit No. 19 of 1961]

Land Laws — Malay holding — Whether land Malay holding — Transfer of land — Allegation of fraud — Burden of proof — Notice to quit — Malay Reservations Enactment, 1360, s. 2, as amended by Trengganu Enactment No. 3 of 1951 — Settlement Enactment, 1356 — Land Enactment, 1357.

In this case the plaintiff claimed to recover possession of a piece of land and house at Kuala Dungun. She alleged that the said land was a Malay holding and therefore no transfer, charge or lease thereof to a non-Malay was permissible. She also alleged that the alleged transfer of the land to the defendant was effected by a fraud practised on her and all she had agreed was to allow the defendant to occupy the land for 10 years.

Held: (1) as the land was held under Akuan Menuntut Tanah, No. 409 which was a recorded interest of an occupier under a recorded possessory title under the Settlement Enactment and not a registered interest in an alienated land, under the Land Enactment the land was not a Malay holding under the Malay Reservations Enactment at the time when the alleged transfer was effected and before the Enactment was amended by Trengganu Enactment No. 3 of 1951;

(2) on the facts of this case the plaintiff had proved fraud and therefore the plaintiff had only agreed to permit the defendant to build two houses on the said land and occupy it for a period of only 10 years;

(3) as the period of 10 years had expired the position of the defendant was that of a tenant at will or that of a contractual licensee whose licence had expired and it was not necessary for the plaintiff to give a notice to quit at all;

(4) on the facts the plaintiff had given sufficient time to the defendant to vacate the land and judgment must therefore be given for the plaintiff.

Cases referred to:-

(1) *Nederlandsche Handel-Maatschappij M.V. (Netherlands Trading Society)* v. *Koh Kim Guan* [1959] M.L.J. 173.

(2) *Nadchatiram Realities (1960) Ltd.* v. *Raman & Ors.* [1965] 2 M.L.J. 263.

(3) *Martinali* v. *Ramuz & Anor.* [1953] 2 All E.R. 392.

CIVIL SUIT.

Dato' Bijaya (*Chandran* with him) for the plaintiff.

A. Wilson for the defendant.

Cur. Adv. Vult.

Ibrahim J.: In this action the plaintiff is praying for an order as follows:

(i) The defendant do demolish the two shophouses on the said land Keterangan Register Mukim 1101 Lot No. 1655 Mukim of Kuala Dungun;

(ii) The defendant or any person or persons claiming through him do give up vacant possession of the said land Keterangan Register Mukim 1101 Lot No. 1655 to the plaintiff;

(iii) Costs of this suit.

In her statement of claim she alleges that she is the registered owner of the said land and that the defendant had built two shophouses on it. She had given notice to the defendant to vacate the land but the defendant had failed to do so and continues to be in wrongful occupation thereof. She also alleges that the said land is a Malay holding and thus no transfer, charge or lease thereof to a non-Malay is permissible.

In his statement of defence the defendant alleges that he had purchased the portion of the said land on which the two houses stand and in support thereof he produced at the hearing an agreement dated August 28, 1949 (Exh. D5). He denies that the said land was at the material time a Malay holding and further alleges that the notice to vacate was bad in law and so of no effect. The defence of limitation was also raised in his statement of defence but it was subsequently abandoned.

In her reply to the statement of defence the plaintiff raises the issue of fraud in respect of D5.

An issue to be decided is whether the said land was or was not on August 20, 1949 (when D5 was made) a Malay holding within the meaning of the Malay Reservations Enactment No. 17 of 1360 for if it was so the purported transfer would be null and void by virtue of section 9(i) of the said Malay Reservations Enactment which provides that no such holding "shall be transferred, charged, leased or otherwise disposed of to any person not being a Malay."

The said Malay Reservations Enactment came into force on November 8, 1941 (19.10.1360 Hijra) and under section 2 thereof "Malay holding" includes

(a) Any registered interest of a Malay as proprietor or co-proprietor in any alienated country land comprised in any holding of less than 10 acres in area, or

(b) (not relevant for the purpose of this case).

This definition was however amended by Trengganu Enactment No. 3 of 1951 which came into force on September 24, 1951 and with effect from that date "Malay holding" includes

(a) any registered interest of a Malay as proprietor or co-proprietor in any alienated country land comprised in any holding not more than 10 acres in area;

(b) any recorded interest of a Malay as occupier or co-occupier in any country land comprised in any holding not more than 10 acres in area and occupied under a recorded possessory claim under the Settlement Enactment;

(c))
) (not relevant for the purpose of this case.)
(d))

According to the District Officer, Dungun (PW1), who is also the Collector of Land Revenue for Dungun District, the said land now held under title K.R.M. (Kenyataan Register Mukim) 1101 Lot 1655 by the plaintiff was originally held under A.M.T. (Akuan Menuntut Tanah) No. 409 in the name of Towkay Lim Baba on February 11, 1936. It was transferred by him to Che Hamid bin Ngah on August 26, 1936 and transmitted to the plaintiff on April 1, 1950. The total area of the land was 1.143 acres but part of it, *i.e.*, .081 acre was acquired by the Government on November 19, 1953 so that the present area is 1.062 acres. The title of the land was replaced by K.S.L. (Kenyataan Settlement Lama) 436 on April 25, 1966 and on February 7, 1957 K.S.L. 436 was replaced by K.S.B. (Kenyataan Settlement Baru) 524. On March 27, 1957 K.S.B. 524 was replaced by K.R.M. 1101, its present title. The land is in the Dungun Town Council area but it has not been declared a town land under the land laws for which purpose it is still a country land. In his view it was a "Malay holding" even before the definition in section 2 of the said Malay Reservations Enactment was amended.

Since as on August 20, 1949 the land was held under A.M.T. No. 409 which was merely a recorded interest of an occupier under a recorded possessory claim under the Settlement Enactment, 1356 Hijra, and not a registered interest in an alienated land under the Land Enactment, 1357 Hijra, I disagree with the view expressed by PW1 and accept the contention of the defendant that it was not on that date a "Malay holding" though it had become so after the amendment was made with effect from September 24, 1951. Lands can only be alienated under the said Land Enactment and not under the said Settlement Enactment and it is apparent that the said land which was then held under A.M.T. No. 409 was not land so alienated. That being the case I find that D5 was not null and void by virtue of the said section 9(i) when it was made on August 20, 1949.

Another issue to be decided is whether there was fraud in respect of D5. Paragraph 2 of the statement of defence reads as follows:

"2. The defendant will maintain and avers that the plaintiff sold a demarcated portion of the land in area 60' x 100' to the defendant and entered into an agreement dated 28th August, 1949 to transfer the said portion of the land for the purposes of constructing houses on the said land."

The plaintiff admits having put her thumb-print on D5 but contends that fraud had been practised on her. In paragraph 1 of her reply to the statement of defence she alleges

"1. With regard to paragraph 2 the plaintiff contends that fraud had been practised on her in relation to the said land K.R.M. 1101 Lot 1655. The defendant misrepresented by saying that the alleged agreement dated August 28, 1949 was a receipt of $250.00 as compensation for permission to occupy the said land in area of 20' x 100' by defendant for 10 years and believing the defendant's words the plaintiff thumb-printed the said agreement."

In her evidence the plaintiff (PW2) said that the defendant whom she had known for some time had asked for her permission to occupy the portion of the said land sufficient for building 2 shophouses and she granted him permission for a period of 10 years after which she would re-possess it. The consideration was $250 and she had put her thumb-print on D5 to acknowledge receipt of the $250 after the defendant and one named Ismail had come to her house and told her that that was the purpose of D5. She was illiterate. No copy of the document was given to her and no-one else thumb-printed or signed the document in her presence. She valued the land at $1,500 and she never thought of selling it for only $250. Furthermore it was a Malay holding. On October 5, 1949 she was called to and made a statement in the Town Council Office, Dungun, before Tengku Hassan who was D.O. or A.D.O. then and in the presence of the defendant Tengku Hassan asked her whether she consented to the defendant building on her land and she said she consented for 10 years. The defendant did not object to her statement about the 10 years. P2 reads as follows:

"SALINAN YANG SAH

(2) in T.B.D. 99/49.

Kenyataan Che' Chik binti Hamid

Saya Che' Chik binti Hamid, mengaku ia-itu sebenar-nya surat tarikh 20.8.1949, yang berkembar dengan plan permohonan Chong Kee Seng, yang di-tunjokkan kepada saya itu ia-lah surat dan chap jari persetujuan saya membenarkan kepada Chong Kee Seng mendirikan sabuah rumah kedai bagaimana permohonan-nya kepada Ketua Bandaran Dungun.

Pada masa ini saya tiada membuat apa2 surat perjanjian dengan Chong Kee Seng itu kerana sama2 perchaya, ia-lah perjanjian dengan ikrar mulut sahaja selama 10 tahun dengan sewa sebanyak $20.00 satahun. Saya ada berchadang hendak buat perjanjian dengan surat apabila permohonan Chong Kee Seng itu di-benarkan.

Saya tiada bimbang apa2 atas perdirian rumah kedai oleh Chong Kee Seng itu dan saya bersetuju bagaimana yang telah saya dan Chong Kee Seng berjanji di-antara saya kedua, ada-nya.

Before me.
t.t. T.B.C.

Tanda tangan saya sendiri
Che' Chik binti Hamid.
5.10.1949."

Ismail bin Ibrahim who prepared D5 gave evidence at a previous hearing on August 7, 1962. He had since died on October 8, 1969 and counsel for the plaintiff had asked that his evidence given at that hearing be put in. As counsel for the defendant had also intended to do the same the court admitted it. Certified true copy of this evidence is Exh: P6 and in it the said Ismail bin Ibrahim had said that he prepared the agreement at his house in the presence of both plaintiff and defendant to whom he had read the contents with which the plaintiff had agreed. The two witnesses, however, had not signed it in his presence and he cannot remember how many copies he prepared.

The defendant (DW1) was 65 years old when he gave evidence and his memory of what took place in 1949 appears to be faltering for he kept on changing his story on many occasions. He was, however, very sure that the plaintiff had agreed to sell the land which was 60' x 100' in area. D5 was prepared by Ismail and as stated therein he paid the plaintiff $280 for the land. Among other things he mentioned that he had kept the transaction a secret and had not stamped the agreement earlier because he was a Chinese and did not want people to know about it. He valued the land then at $200 - $300. The plaintiff told him that she had asked Jusoh to sign the agreement by the riverside. He admitted having been present together with the plaintiff during the interview with Tengku Hassan. He told Tengku Hassan he wanted to erect the buildings and when Tengku Hassan asked the plaintiff whether she consented she said she consented. He thought that the plaintiff had put her thumb-print on a document but could not remember if Tengku Hassan had explained the contents of the document. Tengku Hassan told him about the erection of the building but it was not true that he also told him about the period of 10 years and that he did not object to it. The period of 10 years was never mentioned either by the plaintiff or Tengku Hassan.

The defendant called the two witnesses to the agreement to give evidence in support of his story. According to DW2 who was at the material time the Penghulu of the area he signed D5 in his house which was about 10 chains from the defendant's. The defendant had brought it to his house but he signed it only 2 or 3 days later after he had seen Ismail and Ismail had confirmed its contents. It did not, however, occur to him that he should have enquired from the plaintiff himself. When he signed it the thumb-print of the plaintiff and the signature of the defendant were already there but he was not sure if Jusoh's signature was also there.

According to Jusoh bin Tahir (DW3) who was the Imam of the Kampong at the material time the plaintiff had come to his house and asked him to sign D5. He could not read it but the plaintiff told him that it was about her selling her land to the defendant for $280. When he signed it there were already one thumb-print and two signatures on it.

It is for the plaintiff to prove fraud and the burden of proving that is high. Rose C.J. in *Nederlandsche Handel-Maatschappij N.V. (Netherlands Trading Society)* v. *Koh Kim Guan*[1] after reviewing the authorities at page 175 summed up the position as follows:

"Whatever the precise formula adopted and whatever the theoretical position may be, it has long been the practice in countries where the English system of law operates for the courts, in civil cases, to require a high standard of proof in cases where fraud is alleged."

Bearing in mind the high standard of proof required I find that fraud has been proved in this case. The defendant's assertion that the plaintiff knew the contents of D5 when she signed it is supported by what Ismail bin Ibrahim had said at the previous hearing that the plaintiff had agreed with them when he explained the contents of D5 to both the plaintiff and the defendant and DW3's allegation that the plaintiff had told him that D5 was about the sale of her land to the plaintiff for $280 when she came to get his signature on it. On the other hand the plaintiff's contention that she was informed that D5 was for occupation of her land for only 10 years is corroborated by her statement (Exh: P2) which was recorded by Tengku Hassan only a few months after D5 was made. It is amazing that DW3 who was 70 years old when he gave evidence could remember exactly what the plaintiff was alleged to have told him more than 20 years ago and since it was he who prepared the agreement it is not unexpected that Ismail bin Ibrahim had said that he had explained its true contents to both the plaintiff and the defendant. P2 on the other hand was recorded by a senior official of the Town Council not long after the event and I can see no reason to doubt its truth. In the circumstances of this case I have no hesitation in accepting the plaintiff's contention. I therefore find that the plaintiff had only agreed to permit the defendant to build the two houses on the said land and occupy it for a period of only 10 years.

In her statement of claim the plaintiff referred only to the notice to quit dated May 10, 1961, and it was contended by the defendant that that notice was bad in law and of no effect as no time was given.

Evidence, however, was produced by the plaintiff that before that notice was issued other notices, verbal and written, had been given to the defendant. She had made verbal demands for vacant possession of the land but the defendant had not complied with them. On April 25, 1960 she sent a letter to the defendant asking him to vacate the land in three months. A reply was received dated May 7, 1960 in which reference was made to the agreement. On May 12, 1960 she wrote another letter to the defendant denying that she had sold that land to him and reminding him of the notice to quit given in the letter dated April 25, 1960. The letter dated May 10, 1961 should in my view be read together with the other letters previously sent to the defendant and bearing that in mind I am satisfied that sufficient time had been given to the defendant to vacate the land.

In any event, after the expiry of the period of 10 years the position of the defendant was that of a tenant-at-will or that of a contractual licensee whose licence had expired in which case it is not necessary to give a notice to quit at all. In *Nadchatiram Reali-*

ties (1960) Ltd. v. *Raman & Ors.*[2] it was held among other things that

"as the defendants had been served with a writ which was itself a demand for possession, their tenancy at will had been terminated and by continuing to occupy the quarters they were trespassers;"

and in the course of his judgment at page 265 Ismail Khan J. (as he then was) referred to the judgment of Denning L.J. in *Martinali* v. *Ramuz & Anor.*[3] in which at page 893 His Lordship said:

"It is elementary that a tenancy at will is determined by a demand for possession, not by a notice to quit. These tenancies at will were determined by the issue of a writ claiming possession, which is itself a demand for possession."

In the event I give judgment for the plaintiff as prayed.

Judgment for the plaintiff.

Solicitors: *Dato' Bijaya & Co.; Wilson & Co.*

ISMAIL BIN HAJI EMBONG v. LAU KONG HAN

[G.C.J. (Ibrahim J.) June 16, 1970]

[Kuala Trengganu — Civil Action No. 69 of 1967]

Land Laws — Jual Janji — Transfer of land — Agreement for option to repurchase — Expiry of time — Whether time essence of contract — Contracts (Malay States) Ordinance, 1950, s. 56(1).

Bill of Sale — Transfer of house — Option of repurchase — Whether transfer a bill of sale — Void for non-registration — Bills of Sale Ordinance, 1950, s. 3.

Contract — Sale of land — Option to repurchase movable property — Whether time essence of contract.

The plaintiff had transferred certain land and a Malay-type house on it to one Lau Chee Hoi. An agreement giving an option to repurchase the land and house was entered into at the time when transfer was executed. Although the time for the exercise of the option to repurchase had expired, the plaintiff had been allowed to pay the interest agreed on the loan.

Held: (1) in this case the transactions were loan transactions in respect of the land and the house and in regard to the land it was a *jual janji;*

(2) although the time for the exercise of the option to repurchase had expired, time was not of the essence of the contract, as, even if time was originally of the essence of the contract it had been allowed to pass and the conduct of the parties clearly showed that it was no longer so;

(3) the plaintiff was therefore entitled to repurchase the land on payment of the sum of money lawfully due to the defendant;

(4) as regards the house, which must be regarded as a movable property, the transaction was a bill of sale and therefore void for want of registration; the plaintiff was therefore entitled to recover possession of the house.

Cases referred to:-

(1) *Kiah binte Hanapiah* v. *Som binte Hanapiah* [1953] M.L.J. 82.

(2) *Ponnusamy & Anor.* v. *Nathu Ram* (1959) 3 M.C. 260 at p. 272.

(3) *Wong See Leng* v. *C. Saraswathy Ammal* [1954] M.L.J. 141.

(4) *Haji Abdul Rahman* v. *Mohamed Hassan* [1917] A.C. 209; 1 F.M.S.L.R. 290.

(5) *Simpson* v. *Connolly* [1953] 2 All E.R. 474.

(6) *Jamshed Khodoram Irani* v. *Burjorji Dunjibhai* (1916) L.R. 43 I.A. 26.

(7) *S. Ayadurai* v. *Lim Hye* [1959] M.L.J. 143.

(8) *Wong Kup Sing* v. *Jeram Rubber Estates Ltd.* [1969] 1 M.L.J. 245.

(9) *Wok binte Hussein* v. *Harchand Singh* [1953] M.L.J. 176.

(10) *Madell* v. *Thomas & Co.* [1891] 1 Q.B. 230.

CIVIL SUIT.

A. Wilson for the plaintiff.

Dato' Bijaya for the defendant.

Cur. Adv. Vult.

Ibrahim J.: The plaintiff's claim in this action is for: —

1. a declaration that the transfer of Lot No. 2434 Town of Kuala Trengganu then held under K.S.B. 1050 (now under Grant No. 3784) on March 24, 1962 from the plaintiff to Lau Chee Hai is null and void;

2. a declaration that the transfer of premises No. 732-A on the said Lot on July 28, 1959 from the plaintiff to Lau Chee Hai is null and void;

3. a declaration that the transfer of the said Lot No. 2434 from Lau Chee Hai to Lau Kong Han on May 2, 1963 is null and void;

4. a declaration that the transfer of the said premises No. 732-A on the said Lot from Lau Chee Hai to Lau Kong Han on May 2, 1963 is null and void;

5. an order that the plaintiff be registered as proprietor and owner of the said Lot No. 2434, Town of Kuala Trengganu under Grant No. 3784 and premises No. 732-A thereon;

6. costs; and

7. such further or other relief as the court deems fit.

The defendant contests the claim on the ground that the land and premises had been properly transferred to him by his father Lau Chee Hai on May 2, 1963 and on October 3, 1963 respectively and alleging that the plaintiff was a tenant of both the land and premises at $40 p.m. and was in arrears of rent from October 1965 to September 1967, and counterclaims for: —

a) the sum of $920.00,

b) vacant possession of the premises No: 732 Kampong Darat Nesan Empat, Kuala Trengganu from the plaintiff or anyone claiming through him,

c) costs, and

d) such further order as the court deems fit to grant.

According to the plaintiff (PW1) he in 1959 needed some money and approached a relative of his named Mohamed bin Haji Awang (PW2) to raise a loan for him. 3 to 4 days later PW2 told him that one Lau Chee Hai whom he knew had just received some gratuity on retirement and on an appointment made the 3 of them met at a coffee shop near the old court-house. He told Lau he wanted to borrow $2,000 and it was